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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,416	02/20/2004	Randal T. Bynum	END-5084NP	1876

27777 7590 05/17/2006

PHILIP S. JOHNSON  
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 NEW BRUNSWICK, NJ 08933-7003

EXAMINER

BAXTER, JESSICA R

ART UNIT

PAPER NUMBER

3733

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED

MAY 22 2006

J&amp;J PAT. DKT. SECTION

SEP 18 2006

<b>Office Action Summary</b>	Application No. 10/784,416		Applicant(s) BYRUM, RANDAL T.	
	Examiner Jessica R. Baxter		Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☐ Responsive to communication(s) filed on \_\_\_\_.

2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-13 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-13 is/are rejected.

7) ☐ Claim(s) \_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/58/08) Paper No(s)/Mail Date <u>08102005.02202004</u>	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: ____
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Application/Control Number: 10/784,416  
Art Unit: 3733

Page 2

**DETAILED ACTION*****Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 86/04498 to Hallberg.

Hallberg discloses an implantable surgical device having a deployed shape and an undeployed shape, said device comprising: an elongated flexible inflatable portion (4); and an elongated flexible and substantially inextensible band portion (7) having a distal end, a proximal end and a longitudinal axis therebetween, said band portion being attached to said inflatable portion along an inner face thereof (FIG. 1), wherein when said device is in its undeployed shape at least a portion of said band portion has a concave cross section, taken perpendicular to said longitudinal axis; wherein said inflatable portion and said band portion are integrally manufactured as one part (page 3, lines 25-26); wherein said band portion in its deployed shape has a substantially flat cross section (Page 3, lines 20-23), taken perpendicular to said longitudinal axis; wherein said band portion is at least partially made from at least one of silicone and polyurethane (Page 4, lines 12-17); further comprising a means for attaching said distal and proximal ends of said band together (i.e., an injection port (6) in fluid communication with said inflatable portion.

3. Claims 1-3, 5-7, 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,601,604 to Vincent.

Application/Control Number: 10/784,416  
Art Unit 3733

Page 3

Vincent discloses an implantable surgical device having a deployed shape and an undeployed shape, said device comprising: an elongated flexible inflatable portion (16); and an elongated flexible and substantially inextensible band portion (11) having a distal end, a proximal end and a longitudinal axis therebetween, said band portion being attached to said inflatable portion along an inner face thereof (FIG. 1), wherein when said device is in its undeployed shape at least a portion of said band portion has a concave cross section, taken perpendicular to said longitudinal axis; wherein said inflatable portion and said band portion are integrally manufactured as one part (Column 3, lines 2-5) wherein said band portion in its deployed shape has a substantially flat cross section (FIG. 2), taken perpendicular to said longitudinal axis; further comprising a means for attaching said distal and proximal ends of said band together (13, 19); an injection port (14) in fluid communication with said inflatable portion.

#### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R. Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number: 10/784,416  
Art Unit 3733

Page 4

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter  
Examiner  
Art Unit 3733

  
jrb

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER

PTO/S&amp;MA (04-00)

Approved for use through 10/31/2003, OMB 0551-0001

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Substitute for form 1449A/PTO

**INFORMATION DISCLOSURE  
STATEMENT BY APPLICANT**

(use as many sheets as necessary)

Sheet 1 of 1

Application Number

Filing Date

February 26, 2004

First Named Inventor

Randal T. Byrum

Group Art Unit

Examiner Name

Attorney Docket Number

END-5084NP

**U.S. PATENT DOCUMENTS**

Examiner Initials	Cite No. <sup>1</sup>	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear
		Number	Kind Code <sup>2</sup> (if known)			
JRB		Re. 36176		Kuzmak	03-30-1999	ALL
		4,592,399		Kuzmak et al.	06-03-1986	ALL
		5,226,429		Kuzmak	07-13-93	ALL
		5,601,604		Vincent	02-11-1997	ALL
		6,102,922		Jakobsson et al.	08-15-2000	ALL
		6,453,907	B1	Forsell	09-24-2002	ALL
		6,461,292	B1	6,470,892	10-29-2002	ALL
		6,470,892	B1	Forsell	10-29-2002	ALL
		2003/0105385	A1	Forsell	06-05-2003	ALL
JRB		2003/0114729	A1	Forsell	06-19-2003	ALL

**FOREIGN PATENT DOCUMENTS**

Examiner Initials	Cite No. <sup>1</sup>	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document mm-dd-yyyy	Pages, Columns, Lines, where relevant passages or relevant figures appear	T <sup>3</sup>
		Office <sup>4</sup>	Number <sup>4</sup>	Kind Code <sup>5</sup>				
Examiner Signature	/Jessica Baxter/					Date Considered	04/30/2006	

<sup>1</sup> EXAMINER: Indicate if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.<sup>2</sup> Unique citation designation number. <sup>3</sup> See attached Kinds of U.S. Patent Documents. <sup>4</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>5</sup> For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>6</sup> Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. <sup>7</sup> Applicant is to place a check mark here if English language translation is attached.<sup>8</sup> Burden Hour Statement: This form is estimated to take 2.0 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U. S. Patent and Trademark Office, Washington, DC 20231.

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